BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DOROTHY SLAWSON Claimant VS. **SADDLE ROCK CAFE** Respondent AND **AETNA CASUALTY & SURETY COMPANY** Insurance Carrier	)	Docket No. 205,844

ORDER

Claimant appeals from a preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey. The Order, dated March 14, 1996, denied claimant's request for temporary total disability and medical benefits on the basis of a finding that claimant had failed to establish by a preponderance of the credible evidence she suffered accidental injury arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes:

(1) The finding that claimant did not suffer accidental injuring arising out of and in the course of her employment is a finding subject to review on appeal from a preliminary hearing order. K.S.A. 44-534a(2), as amended by S.B. 649 (1996).

(2) Claimant has not established by a preponderance of the credible evidence that her injury arose out of and in the course of her employment and the decision by the Special Administrative Law Judge should be affirmed.

Claimant alleges she was injured at work on May 31, 1995. Claimant gave only very general testimony about the alleged accident. When asked if she was claiming she injured her back at work on May 31, 1995, she answered:

> "Yes, I was, in the walk-in. I was in there straightening boxes around and putting some orders away that came."

Claimant, who had injured her back before, further testified that when she came out of the walk-in cooler she told Peggy Choate, the owner, that she had injured her back again. On redirect examination she indicated she told Peggy Choate she had hurt her back "in there." Claimant's other testimony does not describe more specifically the event or initial symptoms.

The owner of respondent Saddle Rock Cafe, Peggy Choate, testified that she did not recall claimant telling her that she had hurt her back at work. She acknowledged that she might not have heard the claimant, but it is clear from Ms. Choate's testimony she did not believe claimant had ever told her about the injury.

The Special Administrative Law Judge resolved the conflict in testimony by reference to the medical records. Claimant initially sought medical treatment through a chiropractor. The records of Dr. Lora A. Siegle, from that initial visit of May 31, 1995, refer to right leg and hip pain and give the history of "can't sleep due to the pain" and "no know [sic] injury."

Claimant's counsel points out that the word "know" is improperly used in the medical records. He argues claimant has had prior back injuries and the phrase may have been intended to say that there was no "new" injury. This, according to claimant's counsel, would be consistent with an aggravation of the prior injury. This suggested reading of this phrase is not, however, the more probable. It appears more probable that the phrase was intended to say "no known injury." If the injury occurred as claimed, one would normally expect the medical record to mention it. This factor, coupled with claimant's vague description of accident, convinces the Appeals Board the Order by the Special Administrative Law Judge denying benefits should be affirmed.

After weighing the evidence presented, the Appeals Board finds and concludes that claimant has not sustained her burden to prove more probably than not that she sustained an injury arising out of and in the course of her employment.

WHEREFORE, the Order of Special Administrative Law Judge William F. Morrissey dated March 14, 1996 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Dana D. Arth, Lenexa, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director